

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Gingellville Community Center,
Petitioner,

v

MTT Docket Nos. 307215 (307215 and
316023 consolidated)

Orion Township,
Respondent.

Tribunal Judge Presiding
Jack VanCoevering

ORDER DENYING PETITIONER’S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT’S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT’S MOTION TO IMPOSE COSTS

I. INTRODUCTION

Petitioner, Gingellville Community Center, is appealing Respondent Orion Township’s decision to deny it a charitable exemption from personal and ad valorem taxation for the 2004 and 2005 tax years. On September 30, 2005, Petitioner filed a Motion for Summary Disposition (“Petitioner’s Motion”) in which it contends that, pursuant to Tax Tribunal Rule (“TTR”) 230, TTR 111, and Michigan Court Rule (“MCR”) 2.116(C)(9-10), it is entitled to judgment as a matter of law. On October 31, 2005, Respondent filed a Motion for Summary Disposition (“Respondent’s Motion”) in which it contends that, pursuant to TTR 230, TTR 111, MCR 2.116(c)(9-10), and MCR 2.116(I)(2), it is entitled to judgment as a matter of law. Respondent further contends that it is entitled to costs pursuant to TTR 145, MCR 2.114(E) and MCR 2.625(A)(2) because Petitioner has failed to provide factual or legal support for its position.

On January 5, 2006, the Tribunal conducted oral argument on these cross-motions for Summary Disposition in the above-captioned matter. Petitioner was represented by Mark E. Crane and Respondent was represented by Stephanie Simon Morita.

Petitioner’s Exhibits

A. Gingellville Community Center Certificate of Incorporation

- B.** Gingellville Community Center Constitution
- C.** Certificate of Amendment to the Articles of Incorporation, Article VIII – Dissolution
- D.** Articles from Eccentric Life
 - a. Gingellville Center Opens Doors to Developmentally Disabled.
 - b. Correspondence from Freedom Works
- E.** Senior Aides Project/Host Agency Agreement with Gingellville Community Center
- F.** Community Service Agreement with 52-3 & 52-4 District Courts
- G.** Community Service Records
- H.** Youth Community Service Agreement with Oakland County Probate Court/Circuit Court-Family Division
- I.** Gingellville Community Center 2003 Building Use Printout
 - a. Correspondence from various organizations thanking the Gingellville Community Center
- J.** Affidavit of Pamela Hutchinson
- K.** Organizational Structure of the Gingellville Community Center and Financial Calculations for the 2001-2 calendar years.
- L.** March 2004 Board of Review Decision
- M.** Correspondence From Internal Revenue Service granting Gingellville Community Center 501(c)(3) status.
- N.** Correspondence to Orion Township regarding exemption status.
- O.** Correspondence to Orion Township's chief assessor and Board of Trustees regarding exemption denial.
- P.** Voting Precinct Information
- Q.** Orion Township Master Plan
- R.** Correspondence from Parks & Recreation Director.

Respondent's Exhibits

- 1.** Affidavit of John Attwell
- 2.** Correspondence and Application for 501(c)(3) status from Petitioner to Internal Revenue Service.
- 3.** Correspondence from Internal Revenue Service indicating Petitioner is a 501(c)(3) organization.
- 4.** Petitioner's 2001 Federal Tax Return
- 5.** 2003 Gingellville Community Center Monthly Planner
- 6.** 2003 Facility Rental Agreements for subject property.
- 7.** 2003 Membership Roster
- 8.** 2004 Membership Roster
- 9.** Senior Aides Project/Host Agency Agreement with Gingellville Community Center
- 10.** Building Use
- 11.** Map showing boundaries indicated in Petitioner's Constitution
- 12.** Petitioner's 2003 Federal Tax Return
- 13.** Petitioner's 2004 Federal Tax Return
- 14.** Petitioner's Articles of Incorporation and Amendments
- 15.** Flyer from Petitioner listing activities including "Bus Trips for Active Members" as well as "Member Picnics."

16. Notes from Petitioner's July 14, 2003 General Meeting indicating a "member outing to baseball game."
17. Notes from Petitioner's February 10, 2003 General Meeting indicating a "member outing to Greektown."
18. Notes from Petitioner's October 13, 2003 General Meeting.

II. FINDINGS OF FACT

The subject property is located at 1801 Waldon Rd., in Orion Township, Michigan 48359. The property is owned and occupied by Gingellville Community Center ("GCC") for all of the relevant tax days.

The GCC was incorporated on January 23, 1939 in the State of Michigan. Petitioner's Exhibit A.

The Articles of Incorporation have been altered several times since incorporation, and the current Articles, as amended, indicate that the purpose of the GCC is to "[p]romote activities that shall be of the greatest benefit and to the best interest of the majority of the residents of this community and shall be non-profit, non-sectarian, and non-political."

Petitioner's Exhibit B.

The Articles of Incorporation state that membership is to be composed of residents and property owners in the surrounding community, and also provides for honorary member standing to those residing outside the community who have worked for and contributed to the GCC. Petitioner's Exhibit B.

The Articles of Incorporation state that upon dissolution, after the liabilities are paid, "the assets of the Center shall be distributed equally to at least four, non-profit, non-sectarian and non-political Youth Organizations as voted on by the membership of the Center at the time of such dissolution." Petitioner's Exhibit B.

The GCC has youth and adult probationers completing their required community service hours at the GCC. Petitioner's Exhibits G & H.

The GCC is currently recognized as a 501(c)(3) organization by the IRS. It was formerly listed as a 501(c)(7) organization until July 25, 2002.

The GCC had 55 members in 2004. According to the GCC's Constitution, these members are required to perform 10 hours/month of service for the betterment of the GCC for 12 consecutive months in order to be an active member. Respondent's Exhibit 8 & Petitioner's Exhibit B.

Most of the activities at the property occur on nights and weekends, the building is empty most of the time. The Activities Calendar indicates that the subject property and its building are used for charitable activities such as Freedom Works, Senior Service America, Orion Youth Assistance, Boy Scouts, Girl Scouts, and the Boys and Girls Club. These non-profit, charitable activities promote goodwill. Furthermore, despite Respondent's arguments to the contrary, Freedom Works is offered to an indefinite number of persons despite the fact that it is a service for the developmentally disabled.

The property is also used socially for "bingo and Vegas night," as well as being rented out to members and non-members for wedding receptions and other similar social events. As evidenced by Petitioner's Activities Calendar, this is how the property is primarily used.

The 2004 tax return of the GCC shows that 94% of its total revenue from income-producing activities is derived from Instant Lottery tickets. Respondent's Exhibit 13.

The GCC received \$15,549 in rental income in 2004. Respondent's Exhibit 13.

During oral argument, Respondent indicated its belief that Petitioner discriminates against non-Christians. Respondent points to the calendar used by Petitioner to list its daily activities and surmised that because the calendar shows only Christian holidays, i.e., Easter and Christmas, Petitioner is actually a sectarian organization that discriminates against all other religions. Notwithstanding Respondent's argument to the contrary, there is no evidence of discrimination by the GCC. The holidays listed on the calendar express the views of the calendar's creator, and are not indicative of Petitioner's intent to discriminate. Furthermore, the argument that religious

organizations or any organization united by a common belief cannot also be open to anyone and offer its services to an indefinite number of persons is untenable and in this case unsubstantiated. The Tribunal finds that there is no evidence of discrimination by Petitioner.

Finally, the Tribunal finds that there appears to be no material disputed facts which are dispositive in this case, that the parties have engaged in substantive discovery, and that this matter should be resolved on the remaining legal issues.

A. Petitioner's Contentions

Petitioner contends that it is entitled to exemption from property taxation because it is a charitable organization that owns and occupies the subject property solely for the purposes for which it was incorporated. MCL 211.7o. In support of this contention, Petitioner has provided a list of organizations it supports and activities it conducts. Petitioner further states that many of these activities are recreational in nature, and recreation is a burden of state and local governments. Petitioner also argues that its social gambling activities are fundraising activities and support Petitioner's ability to provide its facility to the public. Petitioner states that its activities lessen this burden of government, and its activities taken as a whole, constitute a charitable gift for the public or an indefinite number of persons.

B. Respondent's Contentions

Respondent contends that Petitioner is not entitled to an exemption under MCL 211.7o because its activities, taken as a whole, do not provide a benefit for an indefinite number of people, and as a result, do not bestow a charitable gift on the public. In support of this contention, Respondent has indicated that the facility is not open to the general public, and is more akin to a social organization than a charitable organization. Respondent also states that, other than for elections, the Township has not used the subject property during the disputed tax years for official Township purposes. Respondent also states that providing a place for community service to be completed is not a gift to the public, but a gift from the probationers to Petitioner. Respondent further stated that Petitioner is a non-sectarian institution, as evidenced by its use of a calendar which recognized holidays such as Christmas, but did not recognize holidays such as Hanukkah.

III. CONCLUSIONS OF LAW

A. Motions for Summary Disposition

Under MCR 2.116(C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28, 33 (1999). In *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314, 317 (1996), the Michigan Supreme Court set forth the following standards for reviewing motions for summary disposition brought under MCR 2.116(C)(10):

In reviewing a motion for summary disposition under MCR 2.116(C)(10), the trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties, MCR 2.116(g)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if affidavits or other documentary evidence show there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (g)(4).

Both parties in this dispute have filed Motions for Summary Disposition, and as a result, the “light most favorable” standard applies to both parties on their respective claims.

B. Exemption from Taxation for Charitable Institutions - MCL 211.7o

Michigan’s General Property Tax Act (“the Act”), MCL 211.1, *et seq.*, provides for the annual assessment and taxation of all real and personal property within the state unless expressly exempted. The Act indicates when the taxable status of real property is determined as evidenced by MCL 211.2(2), which provides that “[t]he taxable status of real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding.”

Therefore, the taxable status of real property is determined on the December 31st before the tax year. Each tax year stands alone. The taxable status of the property for previous years is not controlling.

The Act provides an exemption from ad valorem taxation for a non-profit or charitable institution

in MCL 211.7o. “In Michigan, exemptions from taxation are to be strictly construed in favor of the taxing unit.” *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 298 NW2d 422 (1980). The petitioner bears the burden of establishing beyond a reasonable doubt that the class of exemption claimed was intended by the Legislature if the class has not already been established by statute or through case law. *Detroit v Detroit Commercial College*, 322 Mich 142, 148-149, 33 NW2d 737, 739 (1948). “[Petitioner’s] burden of proof in establishing that it was within an already established class of property entitled to charitable use exemption from property tax [is] proof by a preponderance of [the] evidence, rather than proof beyond a reasonable doubt.” *Holland Home v City of Grand Rapids*, 219 Mich App 384, 557 NW2d 118 (1996). Therefore, it is Petitioner’s burden to establish that it is more likely than not that the facts and evidence support its position that the requirements for an exemption have been met. Michigan’s Supreme Court has indicated that the reason for this heightened burden is because “[exemption] from taxation effects the unequal removal of the burden generally placed on all landowners to share in the support of local government [and] [s]ince exemption is the antithesis of tax equality, exemption statutes are to be strictly construed in favor of the taxing unit.” *Ladies Literary Club, supra*, 409 Mich at 753.

The relevant statute in a charitable exemption dispute is MCL 211.7o. Subsection (1) of this statute states, in pertinent part: “Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act.”

Petitioner contends that the subject property is exempt from taxation under MCL 211.7o(1) because Petitioner is a nonprofit charitable institution recognized by the State and Federal governments and because it owns and occupies real property which is used solely for the charitable purposes for which Petitioner was organized.

26 USC 501(c) lists and defines the types of organizations exempt from business income taxation under the Internal Revenue Code. The types of organizations listed include, under 501(c)(3), “[c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or

educational purposes. . . .” Section 501(c)(7) organizations are defined as “[c]lubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes. . . .” Section 501(c)(8) pertains to fraternal beneficiary societies, orders, or associations, whose purpose is to benefit its members. The Michigan Court of Appeals has indicated that an entity’s federal income tax status is not a determining factor for exemption from Michigan’s property taxes because Michigan’s General Property Tax Act has much more strict requirements to determine whether an organization is exempt. *American Concrete Institute v Michigan State Tax Commission*, 12 Mich App 595 at 606, 163 NW2d 508 at 513 (1968).

In *Engineering Society of Detroit v Detroit*, 308 Mich 539, 14 NW2d 79 (1944), the Supreme Court of Michigan established a four-part test to determine whether a taxpayer would qualify for the MCL 211.7o statutory exemption. The test requires:

- (1) The real estate must be owned and occupied by the exemption claimant;
- (2) The exemption claimant must be a library, benevolent, charitable, educational or scientific institution;
- (3) The claimant must be incorporated under the laws of this state;
- (4) The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.

The third requirement has been eliminated by *American Youth Foundation v Benona Twp*, 37 Mich App 722, 195 NW2d (1972), which held that the portion of MCL 211.7; MSA 7.7 (now MCL 211.7o; MSA 7.7 [4-1]) which denied tax exempt status on the basis of out-of-state incorporation was unconstitutional because it denied equal protection of the law to an otherwise qualified corporation on the basis of its incorporation in a foreign state. In reaching this conclusion, the Court relied upon *WHYY, Inc v Glassboro*, 393 US 117, 89 SCt 286; 21 L Ed 2d 242 (1968), in which the United States Supreme Court held that a state may not deny an otherwise qualified out-of-state institution tax exempt status because of its incorporation in another state, because such action violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. US Const, Am XIV.

i. Is Petitioner a “Charitable Institution?”

The primary dispute in this matter is whether Petitioner is a “charitable institution” for purposes

of the second requirement, that is, the exemption claimant must be a library, benevolent, charitable, educational, or scientific institution. In *Michigan United Conservation Clubs (MUCC) v Lansing Twp*, 423 Mich 661, 378 NW2d 737 (1985). The Michigan Supreme Court defined charity as:

[C]harity ... [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. *MUCC*, 423 Mich. at 671.

The Court agreed that the activities of MUCC did not amount to gifts for the benefit of an indefinite number of persons or the general public without restriction, based on the fact that although members of the public occasionally visited MUCC's office building and used its library, the evidence indicated that use of the property generally was not available to non-MUCC members. MUCC also provided a publication to the public for a fee which covered the cost of publication. The Court did not categorize this publication as a gift, and further held its activities, *taken as a whole*, did not confer a benefit on the general public.

The Michigan Court of Appeals has stated that the “[p]roper focus of [the MUCC] test for determining applicability of ‘charitable organization’ exemption from property taxes is whether the organization’s activities, taken as a whole, constitute [a] charitable gift for [the] benefit of [the] general public without restriction or for benefit of indefinite number of persons.” *Moorland Twp v Ravenna Conservation Club*, 183 Mich App 451 at 457, 455 NW2d 331 at 334 (1990). In *Moorland*, the court found:

[B]y dedicating itself to the conservation and promotion of natural resources and wildlife, areas which have been expressly declared to be of paramount public concern, and by either engaging in independent activities addressing these areas or assisting the state agency charged with the same, [Petitioner] has not only lessened an expressly recognized burden of government but has also conferred a laudable ‘gift’ on the community at the same time. *Moorland*, at 461.

Therefore, the relevant issue is whether the GCC’s activities, taken as a whole, constitute a charitable gift for an indefinite number of persons by erecting and maintaining the Gingellville Community Center and thereby lessening a burden of government. This question must be

answered affirmatively in order for the GCC to qualify for an exemption under MCL 211.7o.

Petitioner has argued that recreation is a recognized burden of government, as evidenced by Respondent's Parks & Recreation Department, and further that the activities that occur at the GCC lessen that burden of government. The problem with this argument is that if recreation were a burden of government, any organization providing recreational activities would arguably qualify for an exemption from property taxation. While state and local governments may subsidize and/or provide certain recreational activities, Petitioner has not shown by a preponderance of the evidence that recreation is a burden of government.

As Justice Cooley noted:

[S]ince taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant. 2 Cooley on Taxation (4th ed.), s 672, pp. 1404-1408.

It is for the Legislature, not the Michigan Tax Tribunal, to expand statutory exemptions and the Legislature has not expressed an unambiguous intent to create an exemption from personal or ad valorem taxation for those providing recreation, and the Tribunal cannot create such a category.

Furthermore, Petitioner's activities, taken as a whole, do not provide a charitable gift for an indefinite number of people. The present situation is more like *MUCC* than *Moorland*. The fact that a charge was made for benefits conferred, against those who were able to pay, does not necessarily detract from the charitable character of an organization. *Oakwood Hospital Corp v Michigan State Tax Commission*, 374 Mich 524, 132 NW2d 634 (1965); *Gull Lake Bible Conference Ass'n v Ross Twp*, 351 Mich 269, 88 NW2d 264 (1958). Charging for benefits conferred is not automatically preclusive because charitable institutions must generate revenue for operations in some manner in order to continue to provide a benefit for the public. While Petitioner is willing to provide the use of the property to the general public, it is only willing to

do so for a price, and that price is substantially higher than the price it charges its own members. The higher rate for non-members effectively discriminates against non-members and the general public. In one instance, a non-member was charged ten times as much for a graduation party than a member. As a result, both the number of people benefited and the nature of the benefit are restricted to a definite number of persons, *i.e.*, those who can afford to use the property and the GCC's members. Consequently, the GCC is not a "charity."

***ii. Is the Subject Property Occupied by the Claimant Solely
for the Purposes for Which It Was Incorporated?***

Respondent contends that Petitioner does not occupy the property solely for the purposes for which it was incorporated as evidenced by the members-only outings, price discrimination against non-members, and various events that primarily benefit Petitioner's membership.

The third prong of the *Engineering Society* test dictates that the exemption exists only when the buildings and other property thereon are "occupied by the claimant solely for the purposes for which it was incorporated." The Supreme Court has indicated that:

[i]n determining whether the property is being devoted to charitable purposes within the meaning of the statute, the rule that tax exemptions are to be construed strictly is generally applied, with the result that, in the absence of a specific charter or statutory provision, no property owned by a charitable institution, but held as a source of income, can escape taxation, although the fact that a charge is made for benefits conferred, against those who are able to pay, in no way detracts from the charitable character of an organization.' *Gull Lake*, 351 Mich at 274-275.

As a result, there are two requirements in this prong of the *Engineering Society* test: (1) whether the purpose of incorporation is charitable, and (2) whether the property which is claimed as exempt is primarily being used in furtherance of the charitable purpose.

In *Gull Lake*, in applying the first requirement, the Court stated: "[i]n determining the true purpose of the [exemption claimant] for owning and maintaining the property, we must not overlook, but rather be largely governed by the purposes set forth in its Articles for incorporation." *Gull Lake, supra*, at 275. As a result, when making the determination of whether or not the corporation's purpose is charitable, the court will look at the corporation's

Articles of Incorporation, by-laws, and charter in order to determine the purpose of the corporation. The stated purpose of the GCC is to “[p]romote activities that shall be of the greatest benefit and to the best interest of the majority of the residents of this community and shall be non-profit, non-sectarian, and non-political.” Petitioner’s Exhibit B. Therefore, Petitioner satisfies the first requirement of this prong.

The second requirement of the third prong dictates that the claimant must occupy the subject property in furtherance of its stated charitable purpose. This requirement is similar to the first prong of the *Engineering Society* test because it not only examines how the property is occupied or used, but also requires occupation or use in furtherance of the organization’s charitable purpose. “Solely occupied for the purposes of incorporation” does not require the property to be exclusively used for the charitable purpose; incidental use or occupation will still satisfy the requirement. The Michigan Supreme Court first held that “solely occupied” is not to be interpreted as synonymous with exclusive use in *Webb Academy v City of Grand Rapids*, 209 Mich 523, 177 NW 290 (1920). Incidental use of the property for other purposes is permissible. *Id.* 209 Mich at 533. In *Webb*, the subject property was primarily used as a school, but was incidentally used as a residence by the teacher during the school year. The Court found that the incidental use of the property as a residence did not remove the property from exempt status. In applying this principle, the Michigan Court of Appeals stated:

With respect to a statutory requirement that an institution be occupied "solely" for the purposes for which it was incorporated, tax exemption is not lost by virtue of occasional or incidental uses for other purposes. If the primary use of a building is for clearly exempt purposes, the exemption is not lost because on occasion the building is used for social purposes or is let out to other organizations. *American Legion Memorial Home Ass'n of Grand Rapids v City of Grand Rapids*, 118 Mich App 700, 708; 325 NW2d 543 (1982).

In *American Legion Memorial Home*, the court determined that use of the premises at issue for social purposes or by groups not affiliated with the American Legion did not defeat the plaintiff’s entitlement to a tax exemption. *Id.* 118 Mich App at 710-711. The court held that the purposes that the Michigan Tax Tribunal had found objectionable "did not detract from the primary purpose of the building as a site for strictly American Legion functions." *Id.* 118 Mich App at 711. As a result, some incidental use is permissible provided it does not detract from the primary purpose of the organization.

While the GCC's stated purpose in the present case does not conflict with the general rule, its activities indicate that the property of the GCC is not used primarily in furtherance of the stated purpose, but is used to provide benefits primarily for its members, the greatest benefit being a place for the members to conduct their social activities such as weddings, anniversaries and other social events. These benefits are made possible through the GCC's revenue-generating social activities such as hall rentals to non-members, weekly bingo nights, and Vegas night. The discrepancy between the hall rental rates charged to members and non-members is the most troubling aspect of these social activities. Petitioner's argument that its sponsorship of gambling events are fundraising events to support its charitable endeavors is not implausible. Fundraising events might, in the proper context, be incidental to its charitable endeavors. However, the charitable endeavors must still predominate both as to frequency and as to the overall nature of the organization's activities. Here, "fundraising gambling events" are a substantial aspect of the GCC's activities. They are not occasional, but regular. They as much support the nominal membership and vastly different benefits to members as they do the relatively minor charitable activities. Indeed it can be said, as Respondent has argued, that they merely support the mortgage on the building. The Tribunal finds that the subject property is not used primarily for Petitioner's stated purpose, but for the benefit of its members. Consequently, Petitioner also fails the third prong of the *Engineering Society* test.

C. Motion for Costs and Attorney Fees

TTR 205.1145(1) states that "the tribunal may, upon motion or upon its own initiative, allow a prevailing party in a decision or order to request costs." MCR 2.625(A)(1) states, "Costs will be allowed to the prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise, for reasons stated in writing and filed in the action." MCR 2.625(A)(2) states that "if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591." MCL 600.2591(3)(a)(i-iii) provides that an action or defense is frivolous if it meets one or more of the following conditions:

- (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

- (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
- (iii) The party's legal position was devoid of legal merit.

Certainly, TTR 205.1145(1) grants discretion to the Tribunal to award costs and/or attorney fees. Here, the Tribunal determines that neither costs nor attorney fees are warranted. Petitioner raised a colorable issue, but failed to carry its burden of showing that, by a preponderance of the evidence, its activities, taken as a whole, conferred a charitable gift on an indefinite number of people.

IV. POST-HEARING BRIEFS

On January 12, 2006, Respondent filed a post-hearing in the above-captioned matter. In its post-hearing brief, Respondent asserts that because Petitioner's Articles of Incorporation limit membership to a definite geographical area, the gift provided is not to an indefinite number of people.

On January 19, 2006, Petitioner filed its post-hearing brief in the above-captioned matter. In its post-hearing brief, Petitioner asserts that Respondent has misconstrued the appropriate legal standard and that the GCC provides a charitable gift for the benefit of the general public and there is not a geographic limitation on who can use the facility notwithstanding the geographic limitation on membership contained in Petitioner's Articles of Incorporation. Petitioner also states that despite the stated geographic limitations, the GCC has members from outside these boundaries as evidenced by the 2003-2004 membership rosters. (Respondent's Exhibits 7 & 8).

The Tribunal finds that Petitioner fails the *Detroit Engineering* with or without a geographic limitation on membership because its primary activities are not charitable. Furthermore, these activities primarily benefit the members and do not confer a charitable gift on the public. Therefore, it is not necessary to address the issue of whether a geographical limitation on membership is a per se failure of the "gift for an indefinite number of persons" test.

IV. CONCLUSION

Petitioner's primary, regularly occurring charitable activity is Freedom Works, which only takes place once per month. There are other miscellaneous activities, such as fundraisers and Boy Scouts, that are arguably charitable, but the organization's activities primarily consist of bingo nights and hall rentals, which, by definition, are not charitable activities given that the rentals are not primarily made to charitable organizations. Furthermore, Petitioner charges higher rental rates to non-members, and as a result, a definite number of people are primarily benefited by the organization's activities, taken as a whole: those who are members.

The Tribunal finds that, based on the evidence provided, Petitioner's activities, taken as a whole, do not confer a charitable gift on the public. While Petitioner does conduct laudable charitable activities such as Freedom Works, the primary purpose of the organization is to benefit its members and maintain a building for their use, and as such, the organization is not charitable and does not qualify for an exemption under MCL 211.7o. Therefore,

IT IS ORDERED that Petitioner's Motion for Summary Disposition is **DENIED**.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is **GRANTED**.

IT IS FURTHER ORDERED that Respondent's Motion for Costs is **DENIED**.

MICHIGAN TAX TRIBUNAL

Entered: April 6, 2006
btv

By: Jack Van Coevering